

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

No. 291

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LOUISIANA & PINE BLUFF RAILWAY COMPANY,  
APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

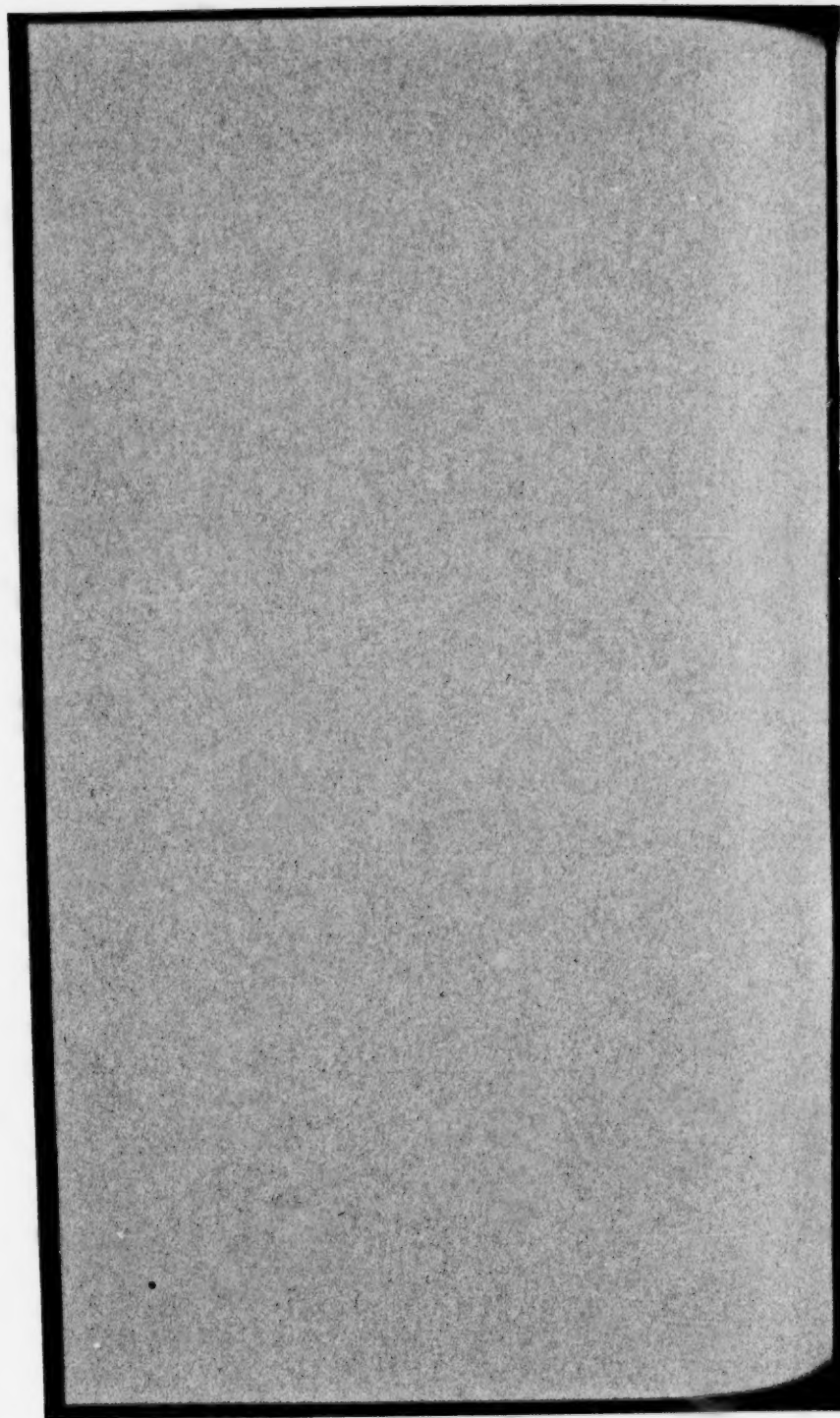
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF ARKANSAS.

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FILED APRIL 7, 1921.

(28,216)



(28,216)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 859.

LOUISIANA & PINE BLUFF RAILWAY COMPANY,  
APPELLANT,

*vs.*

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF ARKANSAS.

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1 District Court of the United States, Western District of Arkansas, Texarkana Division.

In Equity.

No. 44.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

RECORD OF PROCEEDINGS IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION, IN THE ABOVE-ENTITLED CAUSE.

2 *Petition.*

Filed in U. S. District Court May 3, 1920.

In the United States District Court, Western District of Arkansas, Texarkana Division.

In Equity.

No. 44.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

*Petition.*

To the Honorable the Judges of said Court:

The Louisiana & Pine Bluff Railway Company, a corporation of the state of Arkansas, having its principal operating office at Huttig, in the Southern District of Arkansas, presents this its petition against the United States of America, and thereupon your petitioner complainant says:

I.

Your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Arkansas, and has  
3 its principal operating office as recited above, and is a common carrier by railroad engaged in interstate commerce and as such is subject to the Act to Regulate Commerce, approved Feb-

ruary 4, 1887, as amended. It owns and operates standard gauge railroad from Huttig, Arkansas, to Dollar Junction, Arkansas.

Your petitioner's line of railroad connects with the line of railroad owned by the Missouri Pacific Railway Company, successor to the St. Louis, Iron Mountain & Southern Railroad Company, at said Huttig and at said Dollar Junction, and over the line of your petitioner and the line of railroad of the said Missouri Pacific Railway Company and its connections, shipments of lumber and other forest products move in interstate traffic. Your petitioner has complied with all the requirements of the acts of Congress and of the State of Arkansas applicable to common carriers by railroad.

## II.

Petitioner was party to a case before the Interstate Commerce Commission known as "Investigation and Suspension Docket No. 11, The Tap Line Case," decided April 23, 1912, and reported in Volume 23 of the Interstate Commerce Commission reports at page 277. The findings of the Commission as to your petitioner are contained on pages 583 to 587, inclusive, of said report. In said decision, the Interstate Commerce Commission found that your petitioner was not a common carrier, and by its order of May 14, 1912, in accordance with said decision, prohibited the St. Louis Iron Mountain and Southern Railway Company, and its connections, 4 from paying allowances out of the joint interstate rate on lumber and other forest products.

Said decision and order of the Interstate Commerce Commission were reversed and set aside by the Supreme Court of the United States in its decision dated May 24, 1914, in what is known as "The Tap Line Cases," 234 U. S., 1.

On July 29, 1914, the Interstate Commerce Commission handed down its opinion, upon rehearing and further argument, in conformity with the principles announced by the Supreme Court, said opinion the Commission being reported in 31 I. C. C. 490. In said opinion making effective the decision of the Supreme Court, the Commission found that your petitioner, one of the parties to said proceeding, is a common carrier, and thereupon vacated and set aside its prior order dated May 14, 1912. The Commission found, at page 492:

"With respect to each of the tap lines that are parties to this proceeding, the original orders of the Commission, and the orders subsequently entered, so far as they relate to through routes, joint rates, and divisions, will be vacated and set aside; and upon the facts of record, we conclude and find that all the through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and tap lines named on the record should be restored and reestablished, and that the divisions out of the through rate on interstate shipments of lumber and forest products, from points on such of these tap lines as file tariffs and have otherwise complied with our accounting rules, etc., should not exceed the following maximum amounts: For switching a distance of 1 mile or less from the junction \$2 per car; over

1 mile and up to 3 miles from the junction \$3 per car; on shipments from points over 3 miles and not more than 6 miles  
 5 from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds. These divisions are the net amounts that may be paid out of the trunk line rates from the junctions and when the rates from points on the tap line are made by the addition of an arbitrary, such arbitrary shall accrue to the tap line.

These divisions should be applied to all interstate shipments of lumber and forest products that moved from points on the tap lines between May 1, 1912, and the date the through rates and divisions are made effective in compliance with the order entered herein, and are a readjustment of the findings of our original report with respect to the divisions."

Instructions to the trunk lines and tap lines, including your petitioner, are contained in the following paragraph of the opinion (page 493):

"The trunk lines will be expected to file with the Commission a copy of their division sheet with each of their respective tap-line connections, making effective the divisions fixed herein. The division sheet should show the distance in miles from each station or shipping point to the junction with the issuing carrier, in addition to the amount of the division. The tap lines should file with the Commission a copy of their distance tariff or a table of distances from all shipping points on their respective lines to the junctions with the connecting carriers."

The order of the Commission was entered at a general session of the Commission at its office in Washington on July 29, 1914,  
 6 and contained among other provisions the following:

"It is ordered, That the orders of the Commission entered herein May 14, 1912, and October 30, 1912, and all orders entered subsequent thereto with respect to through routes, joint rates, and divisions between trunk lines and tap lines parties to this proceeding be, and the same are hereby vacated and set aside."

It is further ordered, That the principal defendants \* \* \* St. Louis, Iron Mountain and Southern Railway Company \* \* \* be, and they are hereby required, on or before October 1, 1914, on not less than five days' notice, to reopen through routes and publish joint rates to interstate destinations with each of the following parties to the record, with which they respectively have connections or junctions: \* \* \* Louisiana & Pine Bluff Railway Company \* \* \*.

Provided, That the allowances or divisions out of such joint rates to be paid by the said principal defendants respectively to the said parties to the record on lumber and forest products shall not exceed the amounts hereby fixed as maximum allowances or divisions thereon until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful.

It is further ordered, That the allowances or divisions out of the rates on interstate shipments of lumber and forest products from points on the lines of the above named parties to the record shall not exceed the following amounts, namely: For switching a distance of 1 mile or less from the junction, \$2 per car; over 1 mile and up to 3 miles from the junction, \$3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds.

Provided, That these divisions are the net amounts that may be paid out of the trunk line rates from the junction, and when the rates from points on the tap lines are made by the addition of an arbitrary, the amount of such arbitrary shall accrue to the tap line."

### III.

In accordance with said decision and order of the Commission, dated July 29, 1914, the St. Louis, Iron Mountain and Southern Railway Company, with its connections, filed joint rates and re-established through routes for the transportation of lumber and other forest products in connection with your petitioner, from Huttig, Ark., over the line of your petitioner, through Dollar Junction, Ark., and thence over the line of the said St. Louis, Iron Mountain & Southern Railway Company, to various destinations in other states of the United States.

Your petitioner and its connections, the Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company, with other railway common carriers parties to joint through rates on interstate shipments of lumber and other forest products, filed division sheets making effective the allowances or divisions to your petitioner established by the said order of the Commission, dated July 29, 1914. Duly authorized representatives of the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company measured the distance over which lumber and other forest products were hauled by your petitioner from loading points at Huttig, Ark., to points of interchange at Dollar Junction, Ark., and found the same to be in excess of three miles.



# The Missouri Pacific Railway Company

## St. Louis, Iron Mountain & Southern Ry. Co.

AUTHY. No. G-5439

IN CONNECTION WITH  
LOUISIANA & PINE BLUFF RY.

DIVISION BASIS No. 2244-E.  
CANCELS DIVISION BASIS No. 2244-D.

T O  
F R E I G H T T A R I F F S  
O F  
J O I N T R A T E S

S.W.L. No. 48)	Mo. PAC. No.	9 6 7 )
50)		1 4 0 3 )
56)-SERIES.		3 4 2 1 )
63)		2 2 0 9 )
77)		4 8 9 0 )
		A L 8 0 ) - SERIES.
		1 1 1 0 )
		1 5 0 3 )
		3 7 9 3 )
		4 2 0 2 )
		4 9 5 3 )

BASIS FOR DIVIDING RATES  
O N

LUMBER AND OTHER FOREST PRODUCTS, CARLOAD.

RAIES DIVIDE AS FOLLOWS:-

TO FROM		DIVISIONS IN CENTS PER 100 POUNDS	
STATIONS IN THE FOLLOWING TARIFFS, VIZ:- 1110, 1503, 3793, 4202 AND 4953-SERIES; S.W. LINES Nos. 48, 50, 56, 63 AND 77-SERIES, Mo. PAC. Nos. 967, 1403, 3421, 2209 AND 4690-SERIES.	STATIONS ON THE LOUISIANA & PINE BLUFF RAILWAY, VIZ:- HUTTIG, FLANER OF THE UNION SAW MILL CO. DISTANCE TO DOLLAR JCT., ARK., 3.23 MILES.	LOUISIANA & PINE BLUFF RAILWAY, T O DOLLAR JCT., ARK. YELLOW PINE AND CYPRESS Kinds	ST. LOUIS, MO. AND CONNECTIONS BEYOND
	LATH HOUSE OF THE UNION SAW MILL CO. DISTANCE TO DOLLAR JCT., ARK., 3.08 MILES.	1.5	---
	WISCONSIN LUMBER CO. PLANT DISTANCE TO DOLLAR JCT., ARK., 3.31 MILES.	1.5	---
		---	3

DOLLAR JUNCTION, ARK.

ISSUED NOVEMBER 24, 1914.

EFFECTIVE FROM OCTOBER 1, 1914.

ISSUED BY-

(MEMO. E. H. C. 11/23/14, FILE LL-741-45,  
AND SECOND SUPPLEMENTAL REPORT  
1. & S. DOCKET NO. 11.)

W. B. KNIGHT,  
CHIEF OF TARIFF BUREAU,  
ST. LOUIS, MO.



We here insert a division sheet filed by the Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company, No. 2244-E, duly filed with the Interstate Commerce Commission, establishing the allowance or division to your petitioner of  $1\frac{1}{2}$  cents on lumber and other forest products transported by your petitioner from Huttig, Ark., over the line of railroad to Dollar Junction, Ark., and there delivered to the said St. Louis, Iron Mountain & Southern Railway Company, and Missouri Pacific Railway Company, as interstate traffic.

(Here follows reproduction of division sheet, marked page 9.)

10 After a supplemental investigation by the Commission in "I. & S. Docket No. 11", the Commission handed down a further opinion, reported in Volume 40, Interstate Commerce Commission reports, page 470; in said opinion the Commission held that while the actual distance your petitioner hauled lumber and other forest products from the Union Saw Mill at Huttig to Dollar Junction exceeded three miles, a portion of the haul was to and from the track scales, where the lumber was weighed by your petitioner, and that deducting this so-called "out of line or diverted movement to a track scale" the distance the said lumber and other forest products was transported by your petitioner was less than three miles, and that therefore your petitioner was entitled only to \$3 per car as an allowance or division out of the joint through rate.

Your petitioner refused to accept said amount of \$3 per car and insisted upon receiving  $1\frac{1}{2}$  cents per hundred pounds for the haul from Huttig to Dollar Junction; thereupon the Missouri Pacific Railroad Company, successor to the St. Louis, Iron Mountain & Southern Railroad Company, filed its petition for an order to give effect to the findings announced by the Commission in said decision and report contained in 40 I. C. C. 470. Under a rule to show cause why such order should not be entered your petitioner requested the Commission to give further oral argument, which was granted. The case was re-argued before the Commission and the Commission announced its decision June 10, 1919, reported in 53 I. C. C. 475. In said decision the Commission said:

"No question is or was raised as to the correctness of the facts stated in the Commission's previous report, but it was concluded that the track scales, owing to inadequate drainage and other conditions, could not be located between the Union mill and the junction; that the out-of-line haul from the Union mill to the scale and thence to the junction with the Iron Mountain, a distance, as stated, of 3.25 miles, is actually necessary in the handling of the lumber; and that the Louisiana & Pine Bluff is entitled to compensation for services based on that distance. It is denied that any device for securing larger divisions inheres in that method of computing the distance. The track scales are on the main line of the Missouri Pacific and are owned and maintained by that road. It also appears that the movement of the cars from the Union mill to the scales, and for part of the distance from the scales to Dollar Junction, is over the main line of the Missouri Pacific under a trackage arrangement. The evidence does not show that it is necessary that the shipments be weighed by the tap line rather than by the trunk line.

We have considered these contentions and the evidence submitted, but find no sufficient reason for modifying the findings stated in our previous report. Since that report was issued, however, the Commission has made its fifth supplemental order in The Tap Line Case increasing the divisions which may be received by tap lines from their respective trunk line connections 50 cents per car for switching three miles or less and one-half cent per 100 pounds on traffic hauled more

than three miles. These increased divisions are made effective June 1, 1919."

Thereupon the Commission entered the following order:

12

*Order.*

At a General Session of the Interstate Commerce Commission, Held at its Office, in Washington, D. C., on the 10th Day of June, A. D. 1919.

Investigation and Suspension Docket No. 11.

Louisiana & Pine Bluff Divisions.

This case being at issue and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It appearing, That on July 5, 1916, the Commission made its report in the above entitled proceeding, 40 I. C. C. 470, which report is also hereby referred to and made a part hereof:

It further appearing, That in said report the Commission found that the respective distances from the mill of the Union Saw Mill Company and from the mill of the Wisconsin Lumber Company at Huttig, Ark., to the connection with the Missouri Pacific Railroad at Huttig, Ark., are less than one mile; that the distance from the mill of the Wisconsin Lumber Company to the connection with the Missouri Pacific Railroad at Dollar Junction, Ark., is 3.24 miles; and that the distance from the mill of the Union Saw Mill Company to the connection with the Missouri Pacific Railroad at Dollar Junction, Ark., is 2.41 miles;

13 It is ordered, That the divisions accorded to the Louisiana & Pine Bluff Railway out of the rates on interstate shipments of lumber and forest products from mills on the rails of the Louisiana & Pine Bluff Railway at Huttig, Ark., prior to June 1, 1919, shall not exceed the maximum amounts fixed by the order of July 29, 1914, in The Tap Line Case, namely: For switching from the mills of the Wisconsin Lumber Company and the Union Saw Mill Company to the connection with the Missouri Pacific Railroad at Huttig, Ark., a distance of less than one mile, \$2 per car; from the mill of the Union Saw Mill Company to the connection with the Missouri Pacific Railroad at Dollar Junction, Ark., a distance of 2.41 miles, \$3 per car; from the mill of the Wisconsin Lumber Company to the connection with the Missouri Pacific Railroad at Dollar Junction, Ark., a distance of 3.24 miles, 1½ cents per 100 pounds.

It is further ordered, That the increased divisions fixed in the fifth supplemental order in The Tap Line Case, effective June 1, 1919, may be applied to shipments moving on and after that date.

Provided, That the allowances and divisions fixed herein shall be applied to shipments of lumber and forest products moving between May 1, 1912, and the respective effective dates of the divisions established in compliance with this order.

And it is further ordered, That a copy of this order be served upon the Louisiana & Pine Bluff Railway Company, the Missouri Pacific Railroad Company and Georgia C. Hitchcock, special master in the matter of claims against the St. Louis, Iron Mountain & Southern Railway Company.

By the Commission,  
[SEAL.]

GEORGE B. MCGINTY,  
*Secretary.*

14

IV.

Thereafter your petitioner filed its petition for modification of said order, which petition for modification is made a part hereof and attached hereto as Exhibit A. Petitioner alleges that the allegations contained in said petition for modification of said order are true and correct. On December 1, 1919, the Commission entered an order denying the prayer of said petition.

V.

Said Exhibit A contains a blue print or map of the lines of your petitioner and its connection at Huttig, Ark., and Dollar Junction, Ark. Your petitioner alleges that the track scales used by your petitioner in weighing carload shipments of lumber and other forest products were located and established at point E on said blue print, long prior to the institution of the investigation by the Interstate Commerce Commission in what is known as I. & S. Docket 11; that the trunk line connections of your petitioner paid allowances or divisions out of the joint through rate on interstate shipments of lumber and other forest products of 5 cents per hundred pounds, or such other sums as on the particular traffic might be agreed to by petitioner and its connections; that such divisions were paid irrespective of the exact distance such lumber was hauled; that there was no change in the location of said scales until in January, 1915, when the Western Weighing & Inspection Bureau, an organization of the various railroad in Western territory, inspected said scales, condemned them and required their removal to a point where  
15 better drainage facilities and a better approach to the scales could be secured.

Lumber and other forest products of the Union Saw Mill Company at Huttig, are loaded at Point G shown on said blueprint, and are hauled by your petitioner to Point H, a distance of 855 feet, thence to the scales at Point E, a distance of 2,190 feet, where the car is weighed by a sworn weighmaster in the employ of your petitioner, and from E to F, the point of interchange at Dollar Junction, a fur-

ther distance of 14,034 feet, or an aggregate distance of 17,079 feet, or 3.25 miles.

Your petitioner performed the said service thus described on lumber and other forest products for consignors and consignees for many years prior to April 23, 1912, the date of decision of the Commission in the original Tap Line Case, 23 I. C. C. 277, and continuously thereafter until in February, 1915, when the track scales were removed, as heretofore stated, from Point E to Point C on said blue print, a distance of 484 feet, thereby requiring an additional haul over the service performed prior to such removal of 968 feet. Your petitioner since February, 1915, has performed the service of transporting lumber and other forest products from Point G to Point H, thence to Point C, thence to Point E, a total haul of 18,047 feet or 3.42 miles.

The location of the said scales originally at Point E and their removal to Point C, was in accordance with good railroad practice and without any intention to increase the haul of your petitioner and in no sense constituted a device to secure an increase in the allowance or division of the joint through rate on interstate traffic. The track scales are located on the property of the Missouri Pacific Railway Company, and were located by the said Company without any suggestion from your petitioner as to the point of location.

The line of railroad track operated by the Missouri Pacific Railway Company and its predecessor, the St. Louis, Iron Mountain & Southern Railway Company, through the town of Huttig, was originally built by the Little Rock & Monroe Railway Company, the railroad of said Company extending from a connection with the Eldorado & Bastrop division of the St. Louis, Iron Mountain & Southern at Felsenthal, Ark., to Monroe, La. In the year 1905, said Little Rock and Monroe Railway Company was sold to the St. Louis, Iron Mountain & Southern Railway Company, with the right reserved to the owners of the Little Rock & Monroe Railway Company, viz: The Union Saw Mill Company, or its grantees, to operate logging trains over said line of railway and certain portions of track of the subsidiary lines of the St. Louis, Iron Mountain & Southern System. As a part of the terms of sale of said Little Rock & Monroe Railway to the St. Louis, Iron Mountain & Southern Railway Company, the former reserved to itself, to the Union Saw Mill Company or the grantees of said Union Saw Mill Company, the right to use the said lines of railroad track, approximately 1,200 feet in length, through the town of Huttig, and on said track, the said track scales above referred to were, and are, situated.

Your petitioner pays the Missouri Pacific Railway Company 17 cents per car for the use by your petitioner of the rails and right-of-way, approximating 1,200 feet, owned by said Missouri Pacific Railway Company, over which your petitioner transports lumber and other forest products, all operation by your petitioner throughout the entire length of the haul from loading point to point of interchange at Dollar Junction being done by petitioner at its own expense.

Good railroad practice does not permit the interchange of carload shipments of lumber and other forest products received by your petitioner from the Union Saw Mill Company at Huttig, Arkansas, for delivery to the Missouri Pacific Railway Company; the only feasible and practicable interchange for said traffic is at said Dollar Junction.

## VI.

The Iron Mountain Railway Company and its successor, the Missouri Pacific Railway Company, maintain storage tracks for interchange of traffic with your petitioner at Dollar Junction, which tracks were especially constructed for heavy and continuous movement of carload traffic of lumber and other forest products. Operating conditions and practice of the said trunk lines contemplate service of interchange from Felsenthal Yards. None of these storage tracks or these interchange facilities of the said trunk lines is available for interchange at Huttig.

The Interstate Commerce Commission on January 15, 1912, instituted an investigation into the weighing of carload freight by carriers and announced its conclusion in its decision entitled "In re weighing of Freight by Carrier," 28 I. C. C. 7, and at page 18 36 of said decision the Commission said:

"In our opinion every carload of freight, where track scales are relied upon to determine the weight upon which freight charges are to be assessed, should be weighed within fifty miles of the point of origin ordinarily."

As the result of the investigation in that case, the carriers, following the Commission's opinion, prepared what is known as the National Code of Rules Governing Weighing and Reweighing of Carload Freight. This code was endorsed by the Commission on June 9, 1914. Rule 3 of said code deals with "Weights—how ascertained," and Section A thereof reads as follows:

"When track scale weights are used for the assessment of freight charges, weighing must be done by or under the supervision of the carriers or their representatives, or under properly supervised weight agreements."

Rule No. 4 in part is as follows:

"Weights—where ascertained. Carload freight should be weighed at point of origin or as near thereto as practicable."

The lumber delivered by the Louisiana & Pine Bluff at Dollar Junction is picked up by the local freight train of the Iron Mountain starting from Felsenthal and is made up in trains at Felsenthal with other cars, some of the latter requiring weighing at first track scales. Most of the lumber from Huttig is moved via Collinston, Louisiana, and McGehee, Arkansas, and if not weighed at Huttig, cannot be weighed until it reaches the first track scales which are located at

19 said McGehee, 111 miles from Huttig. If the freight moves via Gurdon, Ark., it cannot be weighed until it reaches the first track scales which are located at that point, a distance of 100 miles from Huttig. If the freight moves via Monroe, La., it might be weighed at that point, a distance of 45 miles. At Monroe, the track scales are located three-fourths of a mile north of the freight yard, and cars are handled to and from the scales by yard engines. Every car of lumber weighed at Monroe is handled approximately  $1\frac{1}{2}$  miles to be weighed and placed in train by yard crews. As a matter of safety and economy, it is to the advantage of the trunk line, as well as all concerned, to have the cars weighed at points of origin, guarding against overload, which might cause trouble in transit. It is also to the advantage of the trunk line to have cars weighed at point of origin in order to obtain full tonnage haul, as it is not an infrequent occurrence that the trunk line finds its general estimated train weight high, especially in shipments of finished lumber. The result of such error in estimate is that a train may move forward light.

The original record in the Tap Line Case, I. & S. 11, shows that of the 103 tap lines under investigation in that case, 20 tap lines weighed the out-bound lumber; 13 tap lines had no scales available upon which weighing could be performed; and as to the remaining 70 tap lines, the record is silent as to the existence or non-existence of track scales.

## VII.

It has been the uniform practice in southwestern yellow pine territory that all tap lines subject to the original order of the  
20 Interstate Commerce Commission in the Tap Line Case receive divisions in accordance with the actual distance such tap line transports lumber and other forest products as follows: Where the distance was over one mile and up to three miles, the tap line received a division of \$3 per car; that on shipments from points over three miles and not more than six miles from the junction, the tap line received  $1\frac{1}{2}$  cents per hundred pounds; that each tap line was given the division accruing to it for its haul for even the slightest fraction of a mile, as is shown by pages 16 and 17 of Exhibit A.

By its fifth supplemental order in the Tap Line Case, dated April 7, 1919, the Interstate Commerce Commission increased the divisions or allowances established in its order of June 29, 1914, such increased allowances being effective June 1, 1919, where formerly an allowance of \$3 was accorded for distances between one mile and three miles, \$3.50 per car was authorized, and where the division had been  $1\frac{1}{2}$  cents for distances over three miles and not more than six miles, the division was increased to 2 cents per hundred pounds. These increases in divisions or allowances were made so as to permit the tap line to participate in increased joint rates prescribed by the Director General in his General Order No. 28, effective June 25, 1918, on lumber and other forest products.



## VIII.

The Interstate Commerce Commission in its decision in the case of Detroit Coal Exchange v. Michigan Central, 38 I. C. C. 79, at page 84, held that the haul to and from track scales is properly to be included in the total distance for which the carrier is entitled to compensation, the Commission there saying:

“The several short operations which are necessary to take a car to and from the scale constitute one complete service, just as the several operations necessary to move a car from one industry to another constitute one complete service. The weighing operation is merely one link in the weighing movement, and is not unlike a number of individual operations incident to the average switching movement.”

If its division or allowance out of the through rate be limited to \$3 per car on shipments of lumber and forest products transported prior to 1919, and to \$3.50 per car subsequent to said date, your petitioner's revenue will be inadequate to pay operating expenses and an actual deficit in operating income of your petitioner will result. Walker D. Hines, Director General of Railroads, operating the Missouri Pacific Railroad, the Missouri Pacific Railway Company and its predecessor, the St. Louis, Iron Mountain and Southern Railway Company, all stand ready and willing to pay to your petitioner the division or allowance of 1½ cents per hundred pounds on all shipments moving prior to June 1, 1919, and 2 cents per hundred pounds on shipments moving subsequent to said date, and but for the order complained of herein, would long ago have paid such divisions of 1½ cents and 2 cents, respectively.

Said order of the Interstate Commerce Commission dated June 10, 1919, is unlawful and void; deprives your petitioner of its property without due process of law; is unjustly discriminatory and unduly prejudicial to your petitioner, in that your petitioner is denied compensation for the service of transporting its carload traffic of lumber and other forest products to and from the track scales at Huttig, while other railroad companies are permitted by the Interstate Commerce Commission to receive compensation for similar services of transporting carload traffic of lumber and other forest products to and from track scales on their respective properties located under similar circumstances to those of your petitioner.

The Commission was without authority either in law or in fact to make the order complained of.

As an appendix to Exhibit A is a transcript of all the testimony before the said Commission on the point involved. Said transcript of testimony in no wise contains any evidence in support of the order of the Commission, but on the contrary it expressly negatives said order and requires the establishment of divisions or allowances of 1½ cents per hundred pounds on all shipments moving prior to June 1, 1919, and of 2 cents per hundred pounds thereafter.

## IX.

Said order of the Interstate Commerce Commission of June 10, 1919, deprives your petitioner of its property without due process of law, is without lawful warrant and is in violation of the fifth amendment of the Constitution of the United States.

## X.

Petitioner further shows that if required to comply with said order of the Commission of June 10, 1919, it will be subjected to irreparable loss and injury, without means of reparation, the difference between an allowance or division of \$3 per car from May 1, 1912, and of \$3.50 per car from June 1, 1919, and an allowance of 1½ cents per hundred pounds from May 1, 1912, and 2 cents from June 1, 1919, exceeds \$5,000. Therefore, your petitioner alleges more than \$5,000 is involved in this proceeding.

In consideration whereof, for as much as your petitioner is remediless in the premises at law and relievable only in a Court of Equity, your petitioners pray that a preliminary or interlocutory order or injunction be entered restraining and suspending enforcement of said order of the Interstate Commerce Commission until final determination of this cause; and that upon the final hearing herein a decree be entered enjoining, setting aside, annulling and suspending said order and enjoining, the enforcement thereof.

Your petitioner further prays that your honors will direct that a copy of this petition be forthwith served in the manner provided in acts of Congress, and your petitioner will ever pray, etc.

BARKER & BRITTON,

Boatmen's Bank Bldg.,  
St. Louis, Mo.;

GAUGHAN & SIFFORD,

Camden, Ark.;

BORDERS, WALTER, BURCHMORE &  
COLLIN,

1623 First Nat'l Bank Bldg.,  
Chicago, Illinois,  
*Solicitors for Petitioner.*

HARRY C. BARKER,

ROY F. BRITTON,

T. J. GAUGHAN,

J. T. SIFFORD,

LUTHER M. WALTER,

JOHN S. BURCHMORE,

*Of Counsel.*

STATE OF ARKANSAS,  
*Western District of Arkansas,*  
*Tecarkana Division:*

F. W. Scott, being duly sworn, deposes and says, that he is secretary and manager of the Louisiana & Pine Bluff Railway Company, petitioner herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

F. W. SCOTT.

Sworn to before me this 19 day of April, A. D. 1920.

E. R. FORD,

[Notarial Seal.]

*Notary Public.*

My commission expires Oct. 6, 1921.

EXHIBIT A.

Before the Interstate Commerce Commission.

I. & S. Docket, No. 11.

Louisiana & Pine Bluff Divisions.

*Petition for Modification of Order.*

Now comes the Louisiana & Pine Bluff Railway Company and respectfully requests the Commission to set aside its certain order entered June 10, 1919, in the above entitled proceeding and to enter in lieu thereof an order finding that the distance from the mill of the Union Sawmill Company to the connection of the Missouri Pacific Railway at Dollar Junction, Arkansas, is in excess of three miles and that the division accorded therefor be that prescribed in the original Tap Line Case for distances in excess of three miles and not over six miles, viz: 1½ cents per hundred pounds, for the period from May 1, 1912, to and including May 31, 1919, and 2 cents per hundred pounds after said date, and in support of such petition complainant respectfully shows as follows:

In the report in the above entitled proceeding, dated June 10, 1919, 53 I. C. C. 475, the Commission considered the distance over which the Louisiana & Pine Bluff transported lumber from the mill of the Wisconsin Lumber Company and from the mill of the Union Saw Mill Company to Dollar Junction, where the lumber was delivered to the St. Louis, Iron Mountain & Southern Railway, and found the distance to be respectively 3.21 miles from the Wisconsin Lumber Company mill and 2.41 miles from the Union Saw Mill. The question determined by the Commission was whether the movement of the lumber from the Union Saw Mill Company to the track scale and thence to Dollar Junction, should be

included in the mileage, for which the original Tap Line Case had fixed the allowance or division to be received by the Tap Line. Notwithstanding that the decision of the Commission was upon a re-argument, the Commission states:

"No question is or was raised as to the correctness of the facts stated in the Commission's previous report, but it was contended that the track scales, owing to inadequate drainage and other conditions, could not be located between the Union mill and the junction; that the out-of-line haul from the Union mill to the scale and thence to the junction with the Iron Mountain, a distance, as stated, of 3.25 miles, is actually necessary in the handling of the lumber; and that the Louisiana & Pine Bluff is entitled to compensation for services based on that distance. It is denied that any device for securing larger divisions inheres in that method of computing the distance. The track scales are on the main line of the Missouri Pacific and are owned and maintained by that road. It also appears that the movement of the cars from the Union mill to the scales, and for part of the distance from the scales, to Dollar Junction, is over the main line of the Missouri Pacific under a trackage arrangement. The evidence does not show that it is necessary that the shipments be weighed by the tap line rather than by the trunk line.

25 We have considered these contentions and the evidence submitted, but find no sufficient reason for modifying the findings stated in our previous report. Since that report was issued, however, the Commission has made its fifth supplemental order in The Tap Line Case increasing the divisions which may be received by tap lines from their respective trunk line connections 50 cents per car for switching three miles or less and one-half cent per 100 pounds in traffic hauled more than three miles. These increased divisions were made effective June 1, 1919."

The Commission erred in its failure to modify the finding stated in the previous report and in failing to find that—

1. The service of hauling lumber from the mill to the scales, of weighing the same, and of hauling from the scales to the junction point is a service of transportation ordinarily performed by common carriers.

2. It is the duty of the Louisiana & Pine Bluff Railway under the National Code of Rules Governing Weighing of Carload Freight to weigh lumber at Huttig before delivering same to the Iron Mountain at Dollar Junction, Rule 4 of said code providing "carload freight should be weighed at point of origin or as near thereto as practicable."

3. The scales at Huttig were not located with any intent to increase the distance beyond three miles, and are in the only available place.

4. The scale of divisions prescribed by the Interstate Commerce Commission in the Tap Line Case was designed for general application throughout the yellow pine producing territory and has been universally applied in that territory. The decision of the

27 Commission herein, unless modified as herein prayed for, will operate as an unjust discrimination against the Louisiana & Pine Bluff Railway.

# I.

The service of hauling lumber from the mill to the scales, of weighing the same, and of hauling from the scales to the junction point is a service of transportation ordinarily performed by common carriers.

In a long series of cases this Commission has recognized that the movement of cars to scales, the weighing thereon, the movement thence, is a part of transportation. This question was squarely raised in *Detroit Coal Exchange et al. v. Michigan Central et al.*, 38 I. C. C. 79. The question involved the lawfulness of rules and charges governing the weighing and re-weighing of carload freight in Detroit, Michigan. After a full hearing the rules and charges complained of were held to be unreasonable and unduly preferential. The Commission said (page 80):

"The jurisdiction of this Commission to pass upon the weighing charge is challenged. The weighing service, although performed after the initial physical delivery of the car, is nevertheless an incident of the transportation service, especially as the weight secured is used in the computation of freight charges and in the settlement of claims for shortage. When the transportation is interstate some of its incidents, such as receipt, delivery, storage, demurrage, car service and weighing, assume an interstate character. As the act to regulate commerce applies to 'all services in connection with the receipt, delivery, \* \* \*

28 \* \* \* and handling of property transported,' our conclusion is that we have jurisdiction of the weighing service. *Wilson Produce Co. v. Pa. R. R. Co.*, 14 I. C. C. 170, 173; *C. R. I. & P. Ry. Co. v. Hardwick Elevator Company*, 226 U. S. 426; *New England Coal & Coke Co. v. N. & W. Ry. Co.*, 22 I. C. C. 398.

It is also suggested that where the actual delivery of the car is made by a switching carrier no duty rests upon that carrier to re-weigh the car upon request. This contention is also answered by section 1 of the act which, in connection with the instrumentalities and services comprehended in the term 'transportation,' makes it the duty of every carrier subject to the act 'to provide such transportation upon reasonable request therefor.' If a switching carrier participates in the through movement of a car, a re-weighing of the car is included in the transportation which it is its duty to perform upon reasonable request."

In the case of *In re Weighing of Freight by Carrier*, 28 I. C. C. 7, the Commission conducted a very extensive inquiry into the manner of weighing freight, reliability of scales, etc.; a complete survey was made of all services in ascertaining a basis of weight upon which charges should be computed.

In a number of cases the Commission has exercised jurisdiction and awarded reparation. Some of the cases squarely cover the question of whether the weights should have been taken at point of origin or destination. See *Northern Mercantile Co. v. A. E. Railroad Co.*, 42 I. C. C. 290; *Ewing & Co. v. Oregon Short Line et al.*, 46 I. C. C. 471.

29

## II.

It is the duty of the Louisiana & Pine Bluff Railway under the national code of rules governing weighing of carload freight to weigh lumber at Huttig before delivering same to the Iron Mountain at Dollar Junction, rule 4 of said code providing "carload freight should be weighed at point of origin or as near thereto as practicable."

In the case of *In re Weighing of Freight by Carrier*, 28 I. C. C. 7, at page 36, the Commission said:

"In our opinion every carload of freight, where track scales are relied upon to determine the weight upon which freight charges are to be assessed, should be weighed within fifty miles of the point of origin ordinarily."

As the result of the investigation in that case the carriers, following the Commission's opinion, prepared what is known as the National Code of Rules Governing Weighing and Re-Weighing of Carload Freight. This code was endorsed by this Commission on June 9, 1914. Rule 3 of said code deals with "Weights—how ascertained," and Section A thereof reads as follows:

"When track scale weights are used for the assessment of freight charges, weighing must be done by or under the supervision of the carriers or their representatives, or under properly supervised weight agreements."

Rule No. 4 in part is as follows:

"Weights—where ascertained. Carload freight should be weighed at point of origin or as near thereto as practicable."

30 The lumber delivered by the Louisiana & Pine Bluff at Dollar Junction is picked up by the local freight train of the Iron Mountain starting from Felsenthal and is made up in trains at Felsenthal with other cars, some of the latter requiring weighing at first track scales. Most of the lumber from Huttig is moved via Collinston, Louisiana, and McGehee, Arkansas, and if not weighed

at Huttig cannot be weighed until it reaches the first track scales which are located at McGehee, 111 miles from Huttig. If the freight moves via Gurdon, it cannot be weighed until it reaches the first track scales which are located at that point, a distance of 100 miles. If the freight moves via Monroe, Louisiana, it might be weighed at that point, a distance of 45 miles. At Monroe the track scales are located three-fourths of a mile north of the freight yard and cars are handled to and from the scales by yard engines. Every car of lumber weighed at Monroe is handled approximately  $1\frac{1}{2}$  miles to be weighed and placed in train by yard crews. As a matter of safety, it is to the advantage of the trunk line, as well as all concerned, to have the cars weighed at point of origin, guarding against overload, which might cause trouble in transit. It is also to the advantage of the trunk line to have cars weighed in order to obtain full tonnage haul, as it is not an infrequent occurrence that the trunk line finds its general estimated train weight high, especially in shipments of finished lumber. The result of such error in estimate is that a train moves forward light.

The original record in the Tap Line Case, I. & S. 11, shows that of the 103 tap lines under investigation in that case 20 tap lines weighed the out-bound lumber, 13 tap lines had no scales available upon which weighing could be performed; and as to 70 tap lines the record is silent as to the existence or non-existence of track scales.

The extent of the service performed by the 20 tap lines doing the weighing is not stated in the record, except in the case of the Louisiana & Pine Bluff, and that was developed on the re-hearing. The following tap lines performed weighing services (page reference is to record before the Commission):

Blytheville, Leachville & Arkansas Southern R. R. (track scales at Glenco, also sworn weighmaster). (4058.)

De Queen & Eastern Railroad (has track scales on which north-bound cars are weighed). (2837.)

El Dorado & Wesson Railway (has 100-ton track scale at Wesson 4503). (Cars are weighed there—4504.)

Fourche River Valley & Indian Territory Ry. (Lumber Company owns track scales which are used by the railroad—2334).

Warren & Ouachita Valley Ry.—track scale at Warren (665).

Gulf & Sabine River R. R. Co.—100-ton track scale (6438-9).

Louisiana & Pacific R. R.—track scales at De Ridder, Bon Ami and Fulton (1665). (Road is member Western Weighing Ass'n. (1666).

Mansfield Railway & Transportation Co.—100-ton 40 ft. track scale at Oak Hill (5095).

Ouachita & Northwestern R. R.—track scales at Clarks and Standard (1497).

32 Sabine & Northern—track scales at Deweyville owned jointly by transportation company and K. C. S. and operated by Sabine & Northern under lease (2968).

Tremont & Gulf—3 track scales (Exhibit 1, page 722).

Victoria Fisher & Western—track scales at Fisher (3904).



Caro Northern—track scales at Wydeck (3172). Tap line weighs cars (3171).

Groveton Lufkin & Northern—has track scales (2194).

Nacogdoches & Southeastern—100-ton 40 ft. track scale at Hayward (5473).

Texas Southeastern—has track scales (2661).

Natchez, Columbia & Mobile—track scales at Norfield. Out-bound lumber weighed by tap line (3230-1).

New Orleans, Natalbany & Natchez—has track scales (3386).

Salem, Winona & Southern—track scales at West Eminence (2518-2522).

Deering Southwestern—track scale at Deering (re-hearing page 48e).

In the case of Northern Mercantile Co. v. Arizona Eastern, 42 I. C. C. 290, complainant attacked the practice of the defendant of exacting charges on cedar posts and poles on point of origin weights. The complaint was dismissed, the Commission saying (293):

33 "Defendants' present rules provide that weights of commodities subject to shrinkage in weight from their inherent nature properly obtained at or near point of origin should not be changed, but that if obvious error is discovered each case should be dealt with upon its individual merits and a full report made to the originating carrier. As to other commodities, the rules provide that where the check weight shows a difference of 500 pounds or more, such weight shall govern. Cedar posts and poles are usually exposed to rain and snow after they are cut and before they are shipped and after long hauls such as are here involved will weigh considerably less at destination than at point of origin. Some are shipped greener than others and shrink in weight more rapidly, the shrinkage frequently amounting to 1,000 pounds or more per carload in a haul of 1,000 miles. The rules and practices of defendants as to weighing and re-weighing are in consonance with National Code of Rules Governing Weighing and Re-weighing of Carload Freight and with the views expressed by the Commission — In re Weighing of Freight by Carriers, 28 I. C. C. 7."

A similar question arose in the case of Ewing & Co. v. Oregon Short Line, 46 I. C. C. 471. The Commission dismissed the complaint, saying (472):

"We have previously approved the assessing of charges on articles subject to shrinkage in transit on basis of origin weights. On June 9, 1914, we indorsed the National Code of Rules Governing Weighing and Re-Weighing of Carload Freight, and recommended its application to interstate transportation throughout the country. A rule of that code provides:

"Weights of commodities subject to shrinkage in weights from their inherent nature, properly obtained at or near point of origin, should not be changed, except as provided for in the tariffs of the carriers. If obvious error is discovered, each case should be dealt

with upon its individual merits, and report made to the originating carrier with all the facts.'

34 On January 15, 1916, a similar rule was incorporated into the tariff carrying the rate applicable to this shipment, and is still in effect.

The rule of the Orgeon Short Line under attack was canceled July 23, 1915, since which date the weighing rules of that company have conformed to the National Code of Rules, supra."

This Commission has already held that the Louisiana & Pine Bluff Railway is a carrier subject to the Act to Regulate Commerce. The record discloses that it performed the service of weighing its outbound carload freight long before the Tap Line Case was initiated and that it has constantly performed that service. In so doing it is in exact accord with the decisions of the Commission above referred to and with the National Code of weighing rules applicable throughout the United States.

### III.

The Scales at Huttig were not located with any intent to increase the distance beyond three miles, and are in the only available space.

The old scales were located at point E on blueprint attached, 2,190 feet from the switching point, for many years (St. Louis testimony of February 3, 1916, page 26), but were condemned by the Western Weighing and Inspection Bureau January 10, 1915, and the new scales were completed some time during the latter part of February or first of March of that year. (Rec., 50.)

The new scales were moved 484 feet farther south, the new location being selected by the Iron Mountain so as to secure better drainage facilities (page 26).

35 The appendix hereto gives excerpts from the testimony of various witnesses so far as the same referred to the location of the scales and the service performed by the Louisiana & Pine Bluff Railway.

A blue-print showing the location of the scales and tracks at Huttig is attached to each of twelve copies of this petition. It will be observed that the distance the lumber is actually and necessarily hauled from the loading point to the scales, and thence to Dollar Junction, exceeds three miles and that the change of location of the scales from the old point to the new only increased the distance from 3.24 miles to 3.40 miles. There is, therefore, no possible basis for any contention that the Louisiana & Pine Bluff moved the scales in order to make the service which it performed exceed three miles and thereby secure a larger division.

## IV.

The scale of divisions prescribed by the Interstate Commerce Commission in the tap line case was designed for general application throughout the yellow pine producing territory and has been universally applied in that territory, the decision of the Commission herein, unless modified as herein prayed for, will operate as an unjust discrimination against the Louisiana & Pine Bluff Railway.

The scale prescribed by the Commission in I. & S. No. 11 followed the decision of the Supreme Court reversing the action of the Commission and was applied, as the terms of its order of July 29, 1914, expressly provide, "to the said parties to the record on lumber and forest products." The order provided that the divisions set forth "are the net amounts that may be paid out of the trunk line rates from the junction." These divisions have been applied by the Commission in subsequent decisions. They have been incorporated in the division sheets which have been filed with this Commission, both by tap line and by trunk line.

It has been the uniform practice of all of the tap lines subject to order in I. & S. 11 to receive a division in accordance with the actual distance; wherever the distance was "over one mile and up to three miles from the junction, \$3 per car; on shipments from points over three miles and not more than six miles from the junction, 1½ cents per hundred pounds," etc.; the tap line was given the increase for even the slightest fraction of a mile. The following table gives some of the divisions for slight distances over the scale breaking points paid to the tap lines performing the service of weighing:

37      The following tap lines have scales, as shown in the testimony before the Interstate Commerce Commission in the tap line case, I. & S. 11.

(Figures immediately following name of carrier refer to page of transcript showing scale.)

	Distance.	Division.	Point of origin.	Trunk-line connection.
Blytheville, Leachville & Arkansas Southern (4058) .....	1. 17	\$3.50	Chickasawba	Frisco
Blytheville, Leachville & Arkansas Southern (4058) .....	20. 77	3 1/2 c.	Caraway	Frisco-Cotton Belt
DeQueen & Eastern (2837) .....	7.	2c.*	Geneva	Kansas City Southern
Eldorado & Wesson (4503) .....	10. 19	3c.	Wesson	Rock Island
Fourche River Valley & Indian Territory (2334) .....	11.	3c.	Orchard	Rock Island
Caro Northern (3172) .....	3. 5	1 1/2 c.*	Winder	Texas & New Orleans
Deering Southwestern (rehearing 48-E) .....	1. 5	\$3.50	Hornersville Jct.	St. Louis Southwestern
Deering Southwestern (rehearing 48-E) .....	20. 4	3 1/2 c.	Braggadocia	Cotton Belt
Groveton, Lufkin & Northern (2194) .....	10. 1	2 1/2 c.*	Blix	(Houston E. & W.—) St. L. S. W.
Groveton, Lufkin & Northern (2194) .....	6. 1	2 1/2 c.	Lucy	M. K. & T.
Groveton, Lufkin & Northern (2194) .....	1. 3	\$3.50	G.L.&T. Jct.	M. K. & T.
Gulf & Sabine River (6438) .....	6. 4	2c*	Fullerton	Lake Charles & Nor.
Louisiana & Pacific (1665) .....	1. 1	\$3.50	Bridge Jct.	Missouri Pacific
Louisiana & Pacific (1665) .....	3. 3	2c.	Newton	Missouri Pacific
Louisiana & Pacific (1665) .....	6. 1	2 1/2 c.	Belfield	Missouri Pacific
Louisiana & Pacific (1665) .....	20. 2	3 1/2 c.	Ragley	Missouri Pacific
Louisiana & Pacific (1665) .....	30. 2	4c.	Sweetville	Missouri Pacific
Louisiana & Pacific (1665) .....	40. 3	4 1/2 c.	Bon Ami	Missouri Pacific

Louisiana & Pacific (1665).....	1.2	\$3.50	Hudson River Lbr. Co. sawmill	Gulf, Colo. & S. F.
Louisiana & Pacific (1665).....	40.1	4½c.	Ararat	Gulf, Colo. & S. F.
Mansfield Ry. & Trans. Co. (5095).....	1.11	\$3.00*	Oakhill	Kansas City Southern
Mansfield Ry. & Trans. Co. (5095).....	10.25	2½c.*	Burgess	Kansas City Southern
Mansfield Ry. & Trans. Co. (5095).....	6.9	2½c.	Baker	Texas Pacific
Mansfield Ry. & Trans. Co. (5095).....	10.4	3c.	Mooreville	Texas Pacific
Nacagdoches & Southeastern (5473).....	6.9	2c.*	Hamptons	Texas & New Orleans
Natchez, Columbia & Mobile (3230).....	3.5	1½c.*	Wilkinson	Illinois Central
Ouachita & Northwestern (1497).....	1.6	\$3.50	Clarks	Missouri Pacific
Ouachita & Northwestern (1497).....	10.13	3c.	Standard	Missouri Pacific
Texas Southeastern (2661).....	10.5	3c.	Blix	St. Louis Southwestern
Texas Southeastern (2661).....	6.3	2½c.	Peavy	St. Louis Southwestern
Texas Southeastern (2661).....	10.3	2½c.*	Vair	Houston E. & W. Texas via Diboll
Warren & Ouachita Valley (605).....	1.5	\$3.50	Cloquet	Missouri Pacific

\*NOTE.—Divisions prior to Fifth Supplemental Order I. & S. No. 11.

38 The following table gives some of the divisions for slight distances over the scale-breaking points to some of the tap lines that do not perform the service of weighing.

	Distance.	Division.	Point of origin.	Trunk line connection.
Angelina & Neches River .....	20.5	3½c.	Etoile	St. Louis Southwestern
Angelina & Neches River .....	30.2	4c.	Chireno	St. Louis Southwestern
Brookings & Peach Orchard .....	3½	2c.	Brookings	Missouri Pacific
Builer County Railroad .....	6.15	2½c.	Pollard	St. Louis Southwestern
Central Ry. of Arkansas .....	6.1	2½c.	Plainview	C. R. I. & P.
Central Ry. of Arkansas .....	10.8	3c.	Feauche Jet.	Rock Island
Fordyce & Princeton .....	6.7	2½c.	Cynthiana	Rock Island
Gideon & North Island .....	3.37	2c.	O'Neil	Missouri Pacific
Gideon & North Island .....	20.81	3½c.	North Island	Missouri Pacific
Jefferson & Northwestern .....	10.3	3c.	Pruitt	Texas Pacific
Jefferson & Northwestern .....	1.2	\$3.50	No. Jefferson	Texas Pacific
L'Anquille River Railway .....	1.15	\$3.50	Deutch	Missouri Pacific
Little Rock, Maumelle & Western .....	10.5	3c.	Carnes	Missouri Pacific
Neame Carson & Southern .....	3.38	1½c.*	C. C. Jet.	Kansas City Southern
Red River & Gulf .....	10.42	3c.	Bliss	Mo. Pac. via Longleaf
Red River & Gulf .....	30.12	4c.	Lewiston	Mo. Pac. via Le Compte
Woodworth & Louisiana Central .....	6.2	2½c.	Lamoiree	Missouri Pacific
Woodworth & Louisiana Central .....	6.33	2½c.	Woodworth	Texas & Pacific

\*NOTE.—Division prior to Fifth Supplemental order I. & S. No. 11.

39 The divisions shown are those accorded by the Commission in its Fifth Supplemental order in the Tap Line Case except where otherwise indicated by the note attached to each of the foregoing tables.

These 27 tap lines, it will be observed, are accorded increases in divisions for even distances so short as 1-10 of a mile. These figures are taken from the records of the Commission. It must be manifest to the Commission that a gross injustice will result to the Louisiana & Pine Bluff if it is denied full allowance or division for the service which it actually performs, and if it is not accorded the division which the tap line order permits it to have, while at the same time all of the other tap lines above mentioned and others, are permitted to have the division for the full distance they haul their lumber.

We believe the Commission, in its consideration of this case, failed to examine into the state of the record in this respect and failed to give weight to the facts herein referred to. The annual reports of the Louisiana & Pine Bluff to this Commission show that the division herein asked for will not give it a fair return upon its investment. The United States court is now holding a fund with which to pay the divisions upon the basis we are herein asking. No part of that division has been paid from May 1, 1912, down to this date.

That the length of the haul to and from the scales is properly to be included in the total distance cannot be denied. This Commission said in the case of Detroit Coal Exchange v. Michigan Central, 38 L. C. C. 79, at page 84:

40 & 41 "The several short operations which are necessary to take a car to and from the scale constitute one complete service, just as the several operations necessary to move a car from one industry to another constitute one complete service. The weighing operation is merely one link in the weighing movement, and is not unlike a number of individual operations incident to the average switching movement."

For the reasons herein stated petitioner prays that the order herein complained of be set aside and that an order be issued by the Commission finding that the service performed by the Louisiana & Pine Bluff herein described is for a distance in excess of three miles and that the trunk line carriers may pay an allowance therefor for the period from May 1, 1912, to June 1, 1919, of  $1\frac{1}{2}$  cents and after said date a division of 2 cents.

Respectfully submitted,

LUTHER M. WALTER,  
*Attorney for Petitioner.*

BORDERS, WALTER & BURCHMORE,  
*Of Counsel.*

1623 First Natl. Bk. Bldg., Chicago.



*Appendix.*

St. Louis, Mo., May 5, 1914.

Page 162.

Mr. Bodine: The lumber would be on the track the switch of which is at Point E. It would come out over the track to Point D and from there over the joint track, the track that is used jointly to Point B, and over the main line of the Iron Mountain to Point A, which is the switch of the interchange.

Mr. Snow: And after the cars are set at that point which you have last mentioned, the Louisiana & Pine Bluff Railway

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has no further connection with the movement.

Mr. Bodine: No. I will modify that by saying they very often weigh the cars on that same track.

St. Louis, Mo., February 7, 1916.

Page 20.

Mr. Thomas: \* \* \* Now, on this map I wish to call the Examiner's attention, as also Mr. Sanford's, to the distance from A to B. In taking a car of lumber from the Wisconsin Lumber Company, it would move 1,563 feet between those points.

From B down to C, a car would move 1,185 feet.

From C to D, a car would move 750 feet.

From D back to E, the scales is 420 feet, and from E, the scales, through to Dollar Junction, is 14,034 feet, making a total of 17,952 feet, or 3.40 miles.

Page 21.

Mr. Thomas: The plant of the Union Saw Mill Company \* \* \* would move from G to H, a distance of 855 feet.

From H back to E, the scales, is 2,190 feet.

The distance from E to F, through to Dollar Junction, is

Page 22.

14,034, making the total distance of 17,079 feet, or 3.25 miles.

Page 25.

Mr. Thomas: It was made on the 11th day of September, 1915. He went over the same route that I did, except that the scales had been moved over there, and of course he took the extra dimensions to

the present location of the scales. Other than that, he followed my route the same as the Iron Mountain engineer did.

\* \* \* \* \*

Mr. Britton: Now, Mr. Thomas, do you know whether or not there has been any change in the scales since you made your measurements?

Page 26.

Mr. Thomas: Yes, sir; the scales have been moved south, on the same track, a distance of 904 feet from the point indicated by D.

Mr. Britton: Do you know why the scales were moved?

Mr. Thomas: Those were new scales put in there on account of the other scales being old, having been in there for years, and having been condemned by the Western Weighing & Inspection Bureau.

4 Mr. Britton: Why were not the new scales put in at the old location?

Mr. Thomas: Due to the contour of the track, and to gain better drainage facilities. There is a big, deep ditch that parallels that track all the way through. That track, as you will notice, is 1,457 feet.

Mr. Britton: Do you know whether or not your company had anything to do with the location of those scales?

Mr. Thomas: Nothing that I know of.

Mr. Britton: So that the distances actually moved by these cars are even greater than that shown on this exhibit?

Mr. Thomas: Yes, sir; it would be 484 feet farther south than my figure, or in the total movement it would be just twice that, or 968 feet more to be added to both sets of figures.

Page 28.

Mr. Britton: Mr. Thomas, will you tell the Examiner why the out-bound shipments are weighed at Huttig?

Mr. Thomas: Mr. Examiner, no doubt you appreciate the fact that our line, being a common carrier, we do our own billing of this traffic, and do all our work in regard to in-bound traffic, as prescribed by the Interstate Commerce Commission in their order dated June 1, 1914, wherein they adopted the National code of rules governing weighing and reweighing of carload freight.

They say, in Rule 3:

"Weights—How Ascertained."

5 Section A of that rule reads as follows:

"When track scale weights are used for the assessment of freight charges, weighing must be done by or under the supervision of the carriers, or their representatives, or

Page 29.

under properly supervised weight agreements."

Rule Number 4 of this same issue, has regard to:

"Weights—where ascertained. Carload freight should be weighed at point of origin, or as near thereto as practicable."

These same rules are also embodied in Missouri Pacific-Iron Mountain Circular Number 262-A, the language being almost identical.

Page 32.

Mr. Thomas: There are no tracks at Huttig that could be used as interchange tracks for traffic handled between ourselves and the Iron Mountain. There is the track on which the scales are located, measuring 1,457 feet, which must be kept open for the weighing both of in and out-bound freight, and also used sometimes in the passing of trains.

Page 33.

Mr. Britton: Then, the only track that could possibly be available for the interchange of traffic at Huttig is the scale track, or the track on which the scale is located?

Page 34.

Mr. Thomas: That would be the only one, although it is not the logical one, for the simple reason that we have to keep the  
46 tracks open to weigh not only our out-bound but our in-bound, and the Iron Mountain also.

Page 50.

Examiner Hagerty: Who owns the scale? Is that Iron Mountain?

Mr. Thomas: Iron Mountain owns it, except it is joint; the weighmaster is under the supervision of the Western Weighing & Inspection Bureau. He reports to the New Orleans office of that Bureau.

Examiner Hagerty: When was the new scale put in there? What date?

Mr. Thomas: It was completed—it was condemned, if my memory served me right, on January 10, 1915, and it was completed, I think, some time the latter part of February, or the following month.

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Examiner Hagerty: I will ask again a question in reference to the computing of the distance, why the movement to and from the scales is included?

Mr. Thomas: Well, Mr. Examiner, you understand that we do all of the billing, handle all of the records there at Huttig, both inbound and outbound, except such traffic as is handled in or over the rails of the Iron Mountain direct, and in billing this lumber, you appreciate the fact that we are complying with the order of the Interstate Commerce Commission in regard to weighing the cars at the first scale point, and that being at the point of origin, after securing those weights, scale weights, from the agent of the Western Weighing & Inspection Bureau,

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our agent makes out his way-bills, billing the cars through to destination, or to the river crossings upon which the rates are based, showing the correct rate, as also the extension of the freight charges, and routing the cars through to final destination, regardless of billed destination, and for that reason we are compelled to weigh those cars at Huttig. We perform that service with our own trains, with our own crews, and the agent of the Western Weighing & Inspection Bureau handles the scale. It is absolutely compulsory.

Examiner Hagerty: Well, I do not know whether that answers the question as to why you used the distance to and from the scale in computing the distance.

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Mr. Scott: \* \* \* Our engine, in order to go to Dollar Junction, is headed south. It backs in this track at the Point H, and picks up its train of lumber, pulls it out on the main line and pushes the train back into the scale track indicated as D, where the cars are passed over the scales and weighed, and then it proceeds on north to Dollar Junction.

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Mr. Britton: It moves from H to the scales, the loads are weighed there and it continues right on to Dollar Junction?

Mr. Scott: Yes, sir.

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Examiner Hagerty: Now, can you tell us something about the location of the mill? Why it was put in the place it now is,  
48 and why you included the distance to and from the scale in

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computing the length of the haul of your railroad?

Mr. Britton: Just a moment, the Examiner understands that the distance which we show on this blue print was the distance to the former location of the scales?

Examiner Hagerty: Yes.

Mr. Britton: We have not taken account, in these distances, of the movement of the scales.

Examiner Hagerty: No; but you have taken into account the distance to the old scales?

Mr. Britton: Yes; we have referred to it, and we have made our blue print on the theory that the scales were located where they were before the change was made?

Examiner Hagerty: Yes.

Mr. Scott: The location of the scales was determined according to the conditions there that would give them proper drainage. The location of the blue print is where the scales were located for several years, but they had difficulty in keeping the water out of them, as there is a kind of a low point there, so when the new scales were put in they were moved back south of the location shown on the blue print. It is a higher point, and they can get the proper drainage. That is the explanation of the movement of the scales, or why the position was changed.

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Examiner Hagerty: The Iron Mountain put in the scales?

Mr. Scott: Yes, sir, without—

Examiner Hagerty: Did the Iron Mountain choose the location?

Mr. Scott: Yes, sir; we knew nothing about where they were going to put them until the work was commenced there.

Examiner Hagerty: Would it not have been practical to put that scale anywhere else along the line of travel between Huttig and Dollar Junction?

Mr. Scott: It would be impracticable at any other point. We have not any—these other tracks have to be kept open for the movement of trains.

Examiner Hagerty: They could not be put at Dollar Junction where the interchange track is?

Mr. Scott: The scales could be put there, yes, sir; but we have not been in position—with no revenue coming in, we have not been in position to put in tracks or scales either, at other points where we already have the facilities.

Examiner Hagerty: Now, you have explained quite comprehensively what the Iron Mountain did not get in that sale, etc.

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Mr. Scott: The logs delivered by the Iron Mountain usually are set in on the scale track where they are weighed, and left there.

Examiner Hagerty: It would be proper to say, then, that the scale track is the point of delivery of the logs?

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Mr. Scott: That is the usual point, yes, sir. If that track happens to be blocked or occupied with other loads, etc.